

NTSB Order No. EA-4034

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 29th day of November, 1993

Respondent .

Docket SE-12421

The respondent, by counsel, asks us to overturn an April 3, 1992 order of the law judge¹ that, on the Administrator's motion, dismissed as untimely his appeal from an order of the Administrator that suspends, for 90 days, the Inspection Authorization of respondent's mechanic certificate (No. 365584077

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with airframe and powerplant ratings).² We will deny the appeal, to which the Administrator has filed a reply in opposition.

Respondent concedes that he did not file his appeal from the Administrator's October 2, 1991 Order of Suspension, due within 20 days after service of the order,³ until February 4, 1992, some 83 days after he acknowledged receipt of a copy of the order on November 14, 1991.⁴ He argues, nevertheless, that the law judge's dismissal of the admittedly late appeal should be reversed because, in his view, "just cause" exists for hearing the appeal out of time and because the law judge mistakenly concluded that failure to meet the filing deadline was a jurisdictional bar to Board review. While we agree with the respondent that his tardiness did not divest the Board of

²The suspension was predicated on respondent's alleged violation of section 43.15(a)(1) of the Federal Aviation Regulations.

³The respondent did not claim the Administrator's order the first time it was sent to him on October 2. After that copy had been returned to the Administrator, it was resent by registered mail on November 5, and received by respondent on November 14. The Administrator's order advised the respondent, among other things relevant to the procedure for challenging the Administrator's proposed suspension of his Inspection Authorization, that he had 20 days to file an appeal with the Board. That advice was based on Section 821.30(a) of our rules of practice, which provides as follows:

"§ 821.30 Initiation of proceedings.

(a) *Appeal.* A certificate holder may file with the Board an appeal from an order of the Administrator amending, modifying, suspending, or revoking a certificate. Such appeal shall be filed with the Board within 20 days from the time of service of the order, along with proof of service upon the Administrator."

⁴The law judge stated that the notice should have been filed no later than December 4, 1991.

authority to accept and rule on his appeal, since the applicable time limit is one over which we have discretion to prescribe by rule, we do not agree that justification, under the relevant standard, for excusing the late filing has been demonstrated.

Both here and in his answer to the motion to dismiss filed with the law judge, respondent, who is apparently a German national, suggested that various factors accounted for his failure to file a timely appeal, among them: difficulty in securing an attorney who would or could handle the matter, the length of time involved in overseas mail communications, and the receipt of the Administrator's order "just prior" to the holiday period.⁵ While respondent has made no effort to identify or document how much of his delay in filing an appeal may fairly be attributable to any or all of these factors, it may well be that a request for a modest extension of time to file an appeal based on such considerations would have been viewed favorably if one had been *submitted* before the appeal was due. However, as our decisions on appeals to the full Board establish, see Administrator v. Hooper, NTSB Order EA-2781 (1988) and its numerous progeny, it is not enough, where a filing deadline has been missed, to show that good cause may have existed for taking more time than the pertinent rule allowed. It must also be shown that good cause exists to excuse the failure to request the

⁵Respondent asked that the law judge accept his answer as a request for an extension of time under Section 821.11 of our rules of practice. That rule sets forth a good cause standard for granting such a request.

additional time before the relevant time period expired.⁶ No such showing was attempted here.

Inasmuch as the law judge's decision is consistent with Board policy that appeals whose tardiness is not excusable for good cause shown should be dismissed, her order will be sustained.

ACCORDINGLY, IT IS ORDERED THAT:

1. The decision of the law judge, served April 13, 1992, dismissing respondent's appeal and terminating the proceeding is affirmed, and

2. The respondent's appeal is denied.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.

⁶It is, of course, far less difficult to establish a party's need for additional time than it is to justify a failure to communicate that need before the allotted time runs out.